

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ANTHONY RAVON WILLIAMS,

Defendant-Appellee.

UNPUBLISHED

July 22, 2010

No. 292070

Wayne Circuit Court

LC No. 09-003560-FH

Before: HOEKSTRA, P.J., and JANSEN and BECKERING, JJ.

PER CURIAM.

The prosecution appeals by right the circuit court's order granting defendant's motion to suppress evidence. We reverse and remand for further proceedings. This appeal has been decided without oral argument. MCR 7.214(E).

A Detroit police officer saw a Lincoln Navigator legally parked on a street. But the officer noticed illegally tinted windows and what appeared to be fresh bullet holes in the side of the vehicle. After passing the vehicle, the officer turned and saw defendant get out of the truck and place a small, dark-handled object under the hood. The officer and his partner went around the block and initiated a traffic stop for the tinted windows. After defendant was arrested for failing to have a driver's license, the first officer told his partner what he had seen. The officer's partner found a handgun under the hood, in the location the first officer indicated. The circuit court granted defendant's motion to suppress the handgun because it was not found in the passenger compartment of the vehicle.

In *Arizona v Gant*, ___ US ___, 129 S Ct 1710, 1721; 173 L Ed 2d 485 (2009), the United States Supreme Court cited positively its previous decision in *United States v Ross*, 456 US 798, 820-821; 102 S Ct 2157; 72 L Ed 2d 572 (1982). As the *Gant* Court observed, "[i]f there is probable cause to believe a vehicle contains evidence of criminal activity, [Ross] authorizes a search of any area of the vehicle in which the evidence might be found." *Gant*, 129 S Ct at 1721. Distinguishing automobile searches conducted under the rationale of *Ross* from other types of automobile searches, the *Gant* Court further noted that "*Ross* allows searches for evidence relevant to offenses other than the offense of arrest, and the scope of the search authorized is broader." *Gant*, 129 S Ct at 1721. Thus, the United States Supreme Court has made clear that *Ross* survives *Gant* and remains good law.

In the instant case, defendant was arrested for not having a driver's license in his possession. Standing alone, this offense would not have given the officers probable cause to search defendant's vehicle for contraband. See *Gant*, 129 S Ct at 1719. Accordingly, the central question is whether the officers had independent probable cause under *Ross* to believe that the Navigator contained other contraband or evidence of criminality. We conclude that they did.

A finding of probable cause requires a "substantial basis" for concluding that a search would uncover evidence of wrongdoing. *People v Garvin*, 235 Mich App 90, 102; 597 NW2d 194 (1999); see also *Illinois v Gates*, 462 US 213, 236; 103 S Ct 2317; 76 L Ed 2d 527 (1983). "There must be 'a fair probability that contraband or evidence of a crime will be found in a particular place.'" *Garvin*, 235 Mich App at 102, quoting *Gates*, 462 US at 238. "The determination whether probable cause exists to support a search, including a search of an automobile without a warrant, should be made in a commonsense manner in light of the totality of the circumstances." *Garvin*, 235 Mich App at 102.

The facts of this case were sufficient to establish probable cause to believe that a search of defendant's vehicle would lead to evidence of a crime or contraband. The fresh bullet holes in the side of the vehicle, coupled with the fact that the officer saw defendant hiding a small, dark-handled object under the hood after seeing the police, gave rise to a "fair probability" that the search would lead to a handgun. *Id.* Because the officers had probable cause independent of the offense for which defendant was arrested, they were fully authorized to search beneath the hood of defendant's vehicle. See *Gant*, 129 S Ct at 1721. The circuit court erred by granting defendant's motion to suppress.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Kathleen Jansen
/s/ Jane M. Beckering